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## DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

FILE: B-205229

DATE: December 8, 1981

MATTER OF: Rexnord

## DIGEST:

1. The determination to procure under section 8(a) of the Small Business Act is a matter within the discretion of the contracting agency and SBA, and will not be reviewed by GAO, absent a showing of fraud or bad faith on the part of Government officials.
2. Contracts awarded under section 8(a) of the Small Business Act need not be preceded by competition since in general 8(a) awards are not subject to the competition and procedural requirements of the procurement regulations.

Rexnord protests the refusal of the Defense Logistics Agency's Defense Construction Supply Center (DCSC) to provide it with a copy of request for proposals (RFP) No. DLA-700-81-R-2955 which prevented it or one of its independent dealers from making an offer to the Government for the procurement of 43 diesel-driven construction rollers. For the reasons which follow, the protest is dismissed.

The protest essentially challenges DCSC's decision to award the contract pursuant to section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (Supp. III 1979). Rexnord admits that it does not qualify for award under section 8(a) and that the company which will receive the award does qualify. Rexnord asserts that the set-aside is a ruse since no manufacturer of this equipment could qualify as an 8(a) concern. In this respect, Rexnord notes that the company to receive the award is a dealer for one of Rexnord's competitors. Rexnord protests that, like its competitor, it has dealers who could qualify under section 8(a) and that its dealers should have been permitted to compete for the award. None of Rexnord's dealers has shown any interest in competing in this procurement; nor has any joined in this protest.

Section 8(a) of the Small Business Act, supra, empowers any Government agency having procuring powers to enter into procurement contracts with the Small Business Administration (SBA) under such terms and conditions as may be agreed upon between SBA and the procuring officer. SBA then arranges for the performance of such contracts by letting subcontracts to small business or other concerns. The statute grants SBA and the contracting agencies broad discretionary authority in this area. In view of the broad discretion granted by this statute, we do not review determinations to procure through the 8(a) program unless it appears that there was fraud or bad faith on the part of Government officials. Taylor Construction, B-202622, April 15, 1981, 81-1 CPD 291. This is not the case here.

With regard to Rexnord's suggestion that all small businesses which qualify for award under section 8(a), including its dealers, should be permitted to compete for the contract, section 8(a) authorizes a contracting approach which, in general, is not subject to the competition and procedural requirements of the procurement regulations and the statutory provisions they implement. Arawak Consulting Corporation, 59 Comp. Gen. 22 (1980), 80-1 CPD 404. Thus, we have recognized that non-competitive awards under the 8(a) program are not legally objectionable solely because others might have been able to compete for the award. Eastern Tunneling Corporation, B-183613, October 9, 1975, 75-2 CPD 218.

The protest is dismissed.

*Harry R. Van Cleve*  
Harry R. Van Cleve  
Acting General Counsel